

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

STATE OF IOWA ex rel. IOWA)	
DEPARTMENT OF NATURAL)	
RESOURCES,)	NO. CVCV024553
)	
Plaintiff,)	
)	
vs.)	CONSENT ORDER, JUDGMENT
)	AND DECREE
NORTHWEST IOWA AREA SOLID)	
WASTE AGENCY,)	
)	
Defendant,)	
)	
vs.)	
)	
ELLIOT WADDELL and FIVE STATES)	
ENGINEERING, P.L.C.)	
)	
Third-Party Defendants.)	

The Court is presented with Plaintiff's Petition seeking civil penalties and injunctive relief against Defendant Northwest Iowa Area Solid Waste Agency pursuant to Iowa Code section 455B.307(3). The Court has reviewed the file and being advised by the Plaintiff and Defendant FINDS:

1. The Court has jurisdiction over the parties and the subject matter of this action and both Plaintiff and Defendant consent to entry of this Consent Order, Judgment and Decree.
2. Northwest Iowa Area Solid Waste Agency (NWIASWA), is an entity created pursuant to Iowa Code Chapter 28 and operates a municipal solid waste landfill known as the Northwest Iowa Area Sanitary Landfill in Sioux County, Iowa.
3. At all times material hereto, Elliot Waddell was a professional engineer licensed to practice engineering in the State of Iowa and conducted business in Sioux County, Iowa.

4. Elliot Waddell is the employee and owner of Five States Engineering, P.L.C.

5. At all times material hereto, Elliot Waddell and Five States Engineering P.L.C. held themselves out to be a duly licensed, skilled, and accomplished professional engineer capable of and duly authorized to perform professional engineering services for and on behalf of clients in the State of Iowa.

6. At all times material hereto, NWIASWA relied upon Elliot Waddell and Five States Engineering, P.L.C., to ensure that its operations were in compliance with all applicable law, rules, and regulations.

7. At all times material hereto, Elliot Waddell and Five States Engineering, P.L.C., represented to and ensured NWIASWA that its operations were in compliance with all applicable law, rules, and regulations.

8. Defendant states, for purposes of settlement and this action only, that based on the advice and direction of Elliot Waddell and Five States Engineering, P.L.C., solid waste was deposited in unapproved landfill cells located in Area E-1 of Exhibit A from approximately November 2011 to June 2012, and it began construction on landfill cells 19 and 20 without a construction permit issued by the DNR. As a result of the actions and inactions of Elliot Waddell and Five States Engineering, P.L.C., it has been determined that NWIASWA operations have not been or are not in compliance with all applicable law, rules, and regulations.

9. Defendant further states that Elliot Waddell and Five States Engineering, P.L.C., were the sole proximate cause that NWIASWA operations have not been or are not in compliance with all applicable law, rules, and regulations. However, NWIASWA admits that it can be held legally responsible for the actions and inactions of Elliot Waddell and Five States Engineering, P.L.C.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

10. Defendant shall pay a civil penalty pursuant to Iowa Code section 455B.307(3) of One Hundred Thousand and no/100 Dollars (\$100,000.00) for the violations alleged in the petition. Defendant shall pay the penalty within ten (10) days of entry of this Consent Order, Judgment and Decree. Defendant shall pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance. Payment of the penalty and interest shall be made payable to the State of Iowa and submitted to Plaintiff's attorney, David S. Steward.

11. No later than November 30, 2017, Defendant shall install an interim final closure cap over Area E-1, and a final closure cap over Areas A and B in Exhibit A consisting of 18 inches of soil meeting a hydraulic conductivity of less than or equal to 1×10^{-7} cm/sec and a vegetated 24" erosion layer in accordance with 567 Iowa Admin. Code 113.12(1)"a"-e." Defendant shall apply the quality control and assurance program contained in the proposed Request for Permit Amendment Revised Master Plan, dated December 18, 2014, and the proposed Revisions dated February 6, 2015 ("Revised Master Plan") to the installation of the interim final closure cap over Area E-1 and the final closure cap over Areas A and B. The interim final closure cap over Area E-1 shall not be disturbed, modified or removed except pursuant to DNR approval.

12. No later than November 30, 2017, Defendant shall submit, for review and approval, certification to the DNR of complete installation of the interim final closure cap over Area E-1 and the final closure cap over Areas A and B. The certification shall be prepared by a professional engineer licensed in the State of Iowa.

13. No later than November 30, 2017, Defendant shall complete installation of 48 inches of soil and vegetation to Area E-2 in Exhibit A pursuant to the Revised Master Plan, and submit, for review and approval, certification to the DNR of complete installation. The

certification shall be prepared by a professional engineer licensed in the State of Iowa.

14. Upon final closure of the landfill area contiguous with Area E-1 in Exhibit A (including Area E-1), Defendant shall install additional final cover over Area E-1 in compliance with 567 Iowa Administrative Code 113.12(1), which would otherwise apply to landfill units constructed with a composite liner and leachate collection system pursuant to 567 Iowa Admin. Code 113.7(5)“a”(1). Defendant shall apply the quality control and assurance program contained in the Revised Master Plan to the closure of Area E-1, or a DNR-approved program in accordance with the rules in effect at time of final closure.

15. Pursuant to the resolution passed at Defendant’s regular March 11, 2015 Executive Board Meeting, Defendant assumes full financial responsibility for funding all costs associated with the installation of final cover over Area E-1 in Paragraph 14, and warrants and guarantees it will be financially capable of fulfilling this responsibility.

16. In lieu of the provisions in Paragraphs 14 and 15, Defendant may elect to install a liner and leachate collection system over Area E-1 in Exhibit A in accordance with 567 Iowa Admin. Code 113.7 and the Revised Master Plan prior to final closure for additional disposal space.

17. Defendant is permanently enjoined from violations of 567 Iowa Admin. Code 113.2(8)“b”, 113.4(1), 113.4(2), and 113.7(7)“b”(1).

18. This Consent Order, Judgment and Decree constitutes full and complete resolution of the claims made, or which could have been made, by the Plaintiff in this action against Defendant relating to violations of 567 Iowa Admin. Code chapters 103 and 113, including but not limited to 567 Iowa Admin. Code 113.2(8)“b”, 113.4(1), 113.4(2), and 113.7(7)“b”(1) occurring on or before the date of entry of this decree.

19. This Consent Order, Judgment and Decree is not a permit, and compliance with its terms does not guarantee compliance with all applicable federal, state, or local laws or regulations. Nothing herein relieves Defendant from any other obligation to comply with other federal, state, or local laws, regulations, permits, or orders.

20. Nothing herein shall be construed to prevent or limit the rights of the Plaintiff to obtain civil or administrative penalties and/or injunctive relief for violations occurring after entry of this Consent Order, Judgment and Decree.

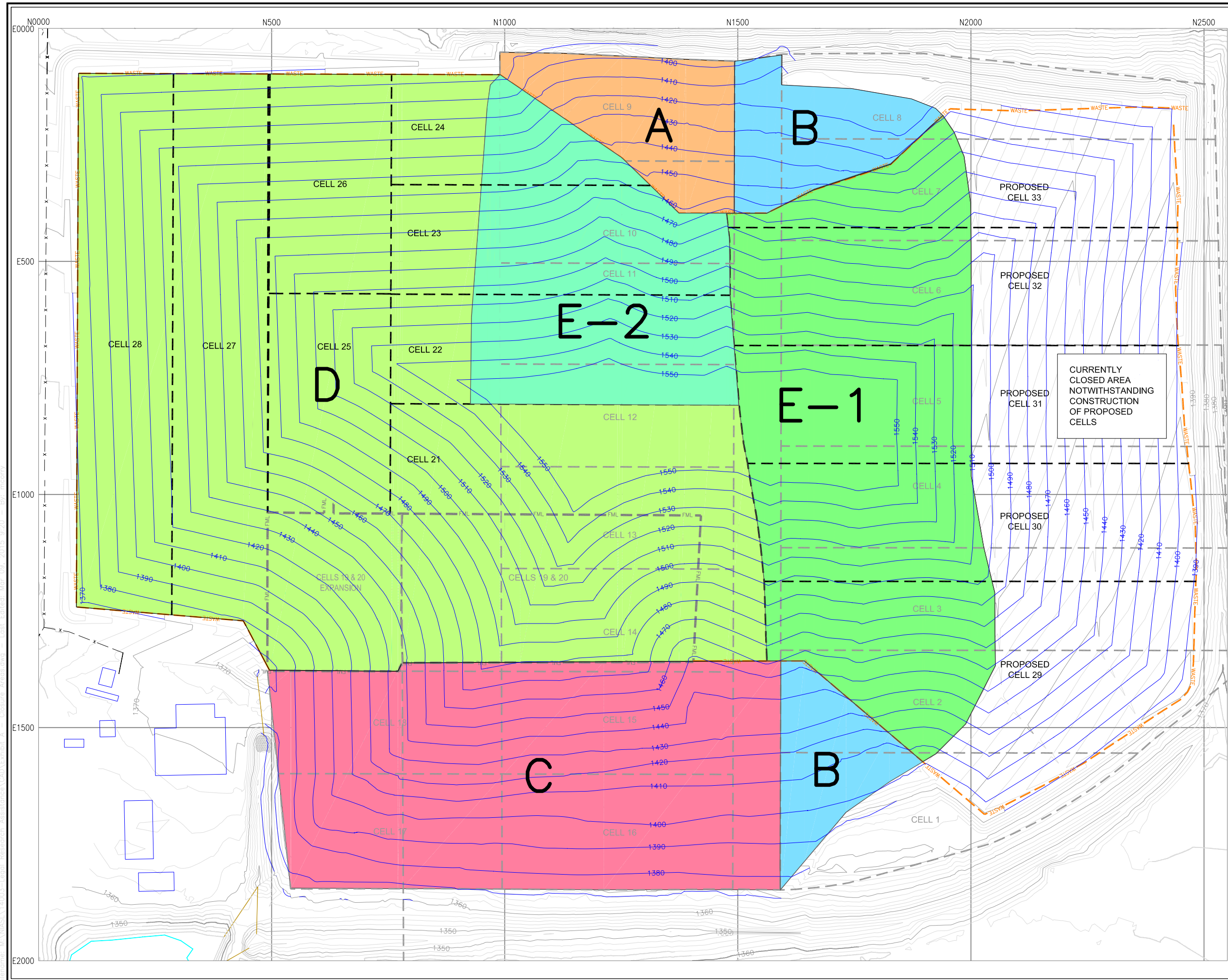
21. In the event Defendant sells or transfers operational or ownership interest in its landfill located in Sheldon, Sioux County, Iowa, Defendant's obligations under this Consent Order, Judgment and Decree shall continue unless and until this Consent Order, Judgment and Decree has been modified to substitute the purchaser, with the purchaser's consent, as the Defendant and thus be bound by the terms thereof, and the Plaintiff consents to relieve Defendant of its obligations.

22. This Consent Order, Judgment and Decree and any schedule or activity required herein may be amended as necessary to accommodate changed circumstances by the written agreement of the Plaintiff and the Defendant, or by further Order of the Court.

23. Willful failure to comply with the terms of this Order may subject Defendant to punishment for contempt of court as well as other penalties and sanctions provided by law. The Court, therefore, retains jurisdiction over this matter to ensure compliance with the terms of this Consent Order, Judgment and Decree.

24. Defendant shall pay to Plaintiff the costs of this action in the amount of \$185.00. Defendant may recover the costs paid to Plaintiff from Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., pursuant to paragraph 25 herein.

25. IT IS FURTHERED ORDERED, ADJUDGED AND DECREED that, pursuant to this Court's March 13, 2014 ORDER GRANTING DEFENDANT/THIRD-PARTY PLAINTIFF'S APPLICATION FOR ENTRY OF JUDGMENT BY DEFAULT AND JUDGMENT ENTRY AGAINST THIRD-PARTY DEFENDANTS, ELLIOT WADDELL AND FIVE STATES ENGINEERING, P.L.C., Judgment shall be, and hereby is, ENTERED in favor of NWIASWA, and against Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., jointly and severally, for compensatory damages in the amount of \$100,000.00, the amount of the civil penalty assessed for said violations and noncompliance, together with all applicable costs and reasonable attorney's fees. NWIASWA shall submit an affidavit of such applicable costs and reasonable attorney's fees within ten days of the date of this Order.



SCALE

0100200

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LEGEND

EXISTING GROUND SURFACE
(2 FT. CONTOUR INTERVAL)

PROPOSED FINAL COVER GRADE
(10 FT. CONTOUR INTERVAL)

BUILDING/STRUCTURE

x

FENCELINE

CULVERT

APPROXIMATE FML BOUNDARY

APPROXIMATE EXISTING CELL BOUNDARY

FUTURE SUBTITLE D
WASTE BOUNDARY

PHASE BOUNDARY

CLOSURE CAP – AREA A

CLOSURE CAP – AREA B

CLOSURE CAP – AREA C

CLOSURE CAP – AREA D

CLOSURE CAP – AREA E-1

INTERIM FINAL CLOSURE CAP
CONSISTING OF 18" OF SOIL
MEETING A HYDRAULIC
CONDUCTIVITY OF 1X10⁻⁷
CM/SEC AND A 24" EROSION
LAYER INSTALLED BY
NOVEMBER 30, 2017.

PRIOR TO FINAL CLOSURE,
INSTALL A CAP MEETING 567
IAC 113.12(1) OR THE RULES
IN EFFECT AT TIME OF
CLOSURE AS IF THE BOTTOM
OF THE LANDFILL IN THIS
AREA WERE CONSTRUCTED
WITH 18" OF COMPACTED SOIL
MEETING A HYDRAULIC
CONDUCTIVITY OF 1X10⁻⁷
CM/SEC AND A 60 MIL HDPE
FLEXIBLE MEMBRANE LINER.

CLOSURE CAP – AREA E-2

TEMPORARY COVER
CONSISTING OF 48" OF SOIL
AS DETAILED IN THE REVISED
MASTER PLAN, APPENDIX 5,
CLOSURE CRITERIA, DATED
DECEMBER 18, 2014.

REVISION:

DATE:

DESCRIPTION:

1

2

3

4

NORTHWEST IOWA AREA SANITARY LANDFILL

SHELDON, IA

PROJECT NO. NIASL14003

DRAWING DATE: FEBRUARY 2015

CLOSURE AREAS MAP

EXHIBIT

A

BARKERLEMAR

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State of Iowa Courts

Type: STIPULATED DECREE

Case Number	Case Title
CVCV024553	STATE OF IOWA EX REL. IOWA DEPARTMENT OF NATURAL RESOURCES V

So Ordered

A handwritten signature in black ink, reading "Duane E. Hoffmeyer". The signature is written in a cursive style with a horizontal line underneath it.

Duane E. Hoffmeyer, Chief Judge,
Third Judicial District of Iowa